

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF ISSAQUAH**

In the Matter of the Application of)	No. FP15-00003
)	
Darren Peugh, on behalf of)	TALUS Parcels 7 & 8 Final Plat Remand
TALUS 7 & 8 Investment, LLC)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Final Plat</u>)	AND DECISION

SUMMARY OF DECISION

The Hearing Examiner **APPROVES** the TALUS Parcels 7 & 8 Final Plat. Conditions are necessary to address specific impacts of the subdivision.

SUMMARY OF PUBLIC MEETING

Meeting Date:

The Hearing Examiner held a public meeting on the request on August 15, 2018. The meeting record was held open until August 17, 2018, to receive any comments on exhibits admitted at the meeting. None was received.

Comments:

The following individuals provided comments at the public meeting:

Keith Niven, City Development Services Director
Doug Schlepp, P.E., City Consulting Engineer
Siew Tan, P.E., PanGEO, Incorporated
Jim Johnson, Professional Engineering Geologist, Golder Associates, Inc.

Attorney Patrick Mullaney represented the Applicant.

Exhibits:

The following exhibits were submitted at the public meeting:

1. Staff Report, Talus Final Plat Remand, dated August 7, 2018, with the following attachments:
 1. Notice of Public Meeting, undated, with vicinity map
 2. Affidavit of Service of Mailing, dated August 1, 2018, with Notice of Public Meeting, vicinity map, and mailing labels

Findings, Conclusions, and Decision
City of Issaquah Hearing Examiner
TALUS Parcels 7 & 8 Final Plat Remand, FP15-00003

3. Hearing Examiner Findings, Conclusions, and Decision, Talus Parcels 7 & 8 Final Plat, dated January 4, 2017
4. Staff Report, dated December 9, 2016, with attachments
5. *ORA Talus 90, LLC v. City of Issaquah and Talus 7 & 8 Investment, LLC*, King County Superior Court, No. 17-204688-4 SEA, Findings of Fact and Conclusions of Law, and Order, dated September 18, 2017
6. Staff Report, dated August 6, 2018, with attachments
- 7.¹ Critical Area Report Talus Parcel 7 and 8, PanGEO, Incorporated, dated June 27, 2018
8. *ORA Talus 90, LLC v. City of Issaquah and Talus 7 & 8 Investment, LLC*, Exhibit list, with exhibits on thumb drive
9. PanGEO Exhibit Directory index, with exhibits on thumb drive
10. Talus Parcel 7 & 8 Critical Area Report (25 sheets), Issaquah Development Services, dated February 26, 2018
11. New proposed condition, dated August 15, 2018, with City of Issaquah 912 Reservoir Settlement Agreement, dated August 15, 2018
12. Subdivision Bond, No. 0219141, dated August 13, 2018

The Hearing Examiner enters the following findings and conclusions based upon the comments offered and the exhibits admitted at the public meeting.

FINDINGS

Background

1. Talus 7 & 8 Investment, LLC, received preliminary plat approval to subdivide approximately 28.8 acres into 63 single-family residential lots on June 2, 2014, with 32 conditions of approval. The property was created through the City's short platting process and three lot line adjustments. The Hearing Examiner was not involved with the preliminary plat for Talus Parcels 7 & 8. Following a public meeting, the Hearing Examiner initially approved the final plat on January 4, 2017, with three conditions. *Exhibit 1, Staff Report, Attachment 3.*
2. ORA Talus 90, LLC, appealed the Hearing Examiner's Final Plat decision to King County Superior Court. On September 17, 2018, the Court partially reversed the January 4, 2017, decision and remanded final plat review to the City with the direction that the City require the following actions before deciding the final plat application for Talus Parcel 7 and Talus Parcel 8:
 - (a) Additional site exploration and analysis of the soil conditions and overall slope stability on Talus Parcel 7 and Talus Parcel 8;
 - (b) Updated Critical Area Reports incorporating the findings of the additional exploration and analysis, and peer review of those Reports; and

¹ At the public meeting, additional documents submitted at the meeting were marked sequentially beginning with Exhibit 7; because the staff report had six attachments the next number in sequence was used for meeting exhibits.

(c) Such other proceedings and relief as are appropriate based on this Court's Findings of Fact and Conclusions of Law.
Exhibit 1, Staff Report, Attachment 5.

3. These actions were completed by the City in the 10 months following the remand. On August 1, 2018, the City mailed notice of the public meeting on the final plat to property owners within 300 feet of the proposal and to all parties of record to the preliminary plat, as required by Issaquah Municipal Code (IMC) 18.04.180 and 18.13.200.A, and by Appendix J, Sec. 2.3.3, of the Talus Development Agreement (Development Agreement). The City's Notice of Public Meeting stated that review of the final plat application would be limited to additional geo-technical evaluation. The City received no written comments from the public in response to the notice. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 1, Staff Report, Attachment 1; Exhibit 1, Staff Report, Attachment 2.*

Reports and Analysis in Response to Court Remand

4. In response to the court remand, Geopier Northwest provided three design drawings, dated July 24, 2018, entitled "Talus Slope Stabilization," detailing the additional site exploration and analysis of the soil conditions and overall slope stability on Talus Parcel 7 and Talus Parcel 8. The slope stability enhancement design drawings depict a minimum static slope stability factor of safety of at least 1.5, in accordance with Appendix E, Sec. 24.0 of the Development Agreement. The drawings were reviewed by RH2 Engineering, Inc.; Golder Associates, Inc.; and Shannon & Wilson, Inc., in accordance with Appendix E, Sec. 24.0 of the Development Agreement. *Exhibit 1, Staff Report, page 2; Exhibit 1, Staff Report, Attachment 5; Exhibit 1, Staff Report, Attachment 6.*
5. In response to the court remand, PanGEO, Incorporated (PanGEO), provided a Critical Area Report (CAR), dated June 27, 2018,² as the required "Updated Critical Area Reports incorporating the findings of the additional exploration and analysis, and peer review of those Reports." The CAR states that Talus Parcels 7 and 8 are adequately stable and appropriate for future housing development with the exception of Lot 5 in Talus 8. The CAR was reviewed by RH2 Engineering, Inc.; Golder Associates, Inc.; and Shannon & Wilson Inc., in accordance with Appendix E, Sec. 24.0 of the Development Agreement. *Exhibit 1, Staff Report, Attachment 6; Exhibit 7.*

Environmental Review

6. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, during the preliminary plat approval process. On August 6, 2018, the City Development Review Services (DRS) determined that the proposed final plat, with conditions, would not have a probable, significant adverse impact on the environment. The Applicant was required to bond or complete the Talus Par 5 Slope Stability Enhancement prior to approval the

² PanGEO, Inc. prepared an updated CAR, dated January 2018, and revised on May 24 and June 27, 2018.

Final Plat, and a bond was signed on August 13, 2018. The Home Owners Association would be required to provide annual inspection and maintenance for the engineered geocell/geotextile landscaping treatment of the rock cut slope below the 916 Reservoir in Parcel 7, including maintenance of the landscaping and drainage at the toe of the slope. *Exhibit 1, Staff Report, Attachment 3; Exhibit 1, Staff Report, Attachment 6; Exhibit 11; Exhibit 12.*

Staff Recommendation and Public Meeting

7. The City reviewed the updated CAR, the Lot 5 slope stability enhancement design drawings, the peer review comments, and the Applicant's response to these documents prior to making a recommendation of approval of the final plat. The City recommended that the Hearing Examiner reapprove the Final Plat, incorporating the conditions of the January 2017 Final Plat approval and the conditions recommended by its Development Engineering Consultant, described below in Finding 8. *Exhibit 1, Staff Report, page 2.*
8. As part of its review, Doug Schlepp, City Development Services Department Engineering Consultant, recommended that two additional conditions be attached to final plat approval. These are:
 1. Prior to approving the Final Plat for Talus Parcels 7 and 8 the applicant shall bond or complete the Talus Parcel 8 Lot 5 Slope Stability Enhancement per the approved permit associated with the work.
 2. The engineered geocell/geotextile landscaping treatment of the rock cut slope below the 916 Reservoir in Parcel 7 will likely require periodic long-term maintenance of the landscaping and drainage at the toe of the rock cut slope. The Home Owners Association documents for the plat shall address the requirement to provide annual inspection and maintenance as necessary.
Exhibit 1, Staff Report, Attachment 6; Comments of Doug Schlepp.
9. The Applicant's attorney, Patrick Mullaney, stated that the superior court's September 18, 2017, order was appealed to the court of appeals. The Applicant agreed to stay further court proceedings pending the outcome of the final plat meeting and Hearing Examiner's decision. He requested that the City's staff report and attachments 1-6, including all the exhibits from the December 2016 Final Plat public meeting, be made part of the record. He requested that the CAR, the LUPA record before the superior court, and PanGEO support documents be included in the record. He stated his opinion that these documents show compliance with the review requirements identified in the remand. *Exhibit 1, Staff Report, Attachment 5; Exhibits 7, 8, and 9; Statement of Attorney Mullaney.*
10. City Development Services Department Director Keith Niven stated that the City worked with the Applicant and Talus Parcel 9 representatives on an agreement to address the

geotechnical stability issue remanded by the court. He commented that the Final Plat conditions in the January 4, 2017, decision should continue to apply, along with the two additional conditions recommended by the City's Development Engineer Consultant. He commented that the City and the Applicant had signed a 912 Reservoir Settlement Agreement regarding future maintenance and repairs. He asked that a third condition be attached to approval of the Final Plat, stating that approval is reliant upon the execution of the 916 reservoir maintenance agreement. He expressed his opinion that, with these conditions, all requirements of the remand will be satisfied. *Exhibit 1, Staff Report, Attachment 6; Exhibit 11; Comment of Mr. Niven.*

11. Siew Tan, P.E., a PanGEO geotechnical consultant, appeared at the public meeting on behalf of the Applicant. He commented that he reviewed the prior 2014 Terra Associates geotechnical analyses for Talus Parcels 7, 8, & 9. He also performed additional test borings to determine slope stability and prepared the PanGEO CAR, dated June 27, 2018. He stated that, in his professional opinion, final plat approval, as conditioned, would protect public health and safety. *Exhibit 1, Staff Report, Attachment 5; Exhibit 7; Comment of Mr. Tan.*
12. Jim Johnson, a professional engineering geologist with Golder Associates commented at the public meeting that he performed the peer review of PanGEO's progress reports, provided comments to the City and back to PanGeo, and issued a final set of comments. He stated his opinion that the revised CAR adequately characterized the geological conditions on Parcels 7 and 8. He also stated his opinion that final plat approval, as conditioned, would protect public health and safety from a geotechnical standpoint. *Exhibit 10; Exhibit 12; Comments of Mr. Johnson.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide final plat applications under Issaquah Municipal Code (IMC) 18.04.490.C.2 and 18.13.200. A final plat is reviewed at a public meeting and does not require review at an open record hearing. *IMC 18.04.470.B.*

Criteria for Review

The Hearing Examiner shall review the final plat and all documents including any public comments and approve the final plat if the final plat:

1. Except for minor modifications under IMC 18.13.160, Modification of an approved final plat, is consistent with the approved preliminary plat; and
 2. Is consistent with the provisions of this title and Chapter 58.17 RCW.
- IMC 18.13.200.B.*

These criteria include the criteria for review of plats set forth in RCW 58.17.110, the state subdivision statute. The City Council and Urban Village Development Commission addressed

the consistency of the application with RCW 58.17.110 criteria during preliminary plat review. As a result of preliminary plat review, the Council approved the preliminary plat with 32 conditions. The proposed plat also underwent final plat review at an initial public meeting held by the Hearing Examiner, with approval granted on January 4, 2017. Because the application has already undergone review for consistency with the applicable subdivision criteria, and because conditions of approval were applied to ensure consistency, final plat review at the second public meeting was limited to determining whether there is now compliance with the conditions of the judicial remand to the extent that the final plat application can now again be approved. As noted in the findings above, both the City and the Applicant expressed an opinion that the requirements of the judicial remand have now been satisfied. The Hearing Examiner agrees with this assessment, and therefore makes the following conclusions, based upon the entire record provided at both public meetings.

Conclusions Based on Findings

1. **With conditions, the proposed final plat will comply with Chapter 18.13 IMC technical requirements.** The City gave reasonable notice of the final plat application and associated public meeting. No one representing Talus Parcel 9 or any member of the public commented at the public meeting. The City, through the preliminary plat process, previously reviewed the environmental impacts of developing the property, as required by SEPA. The Applicant has generally complied with Chapter 18.13 IMC technical requirements, including dedications and certifications, improvements, and financial guarantees on deferred improvements. The City required additional site exploration and analysis of the soil conditions and overall slope stability on Talus Parcel 7 and Talus Parcel 8, and required an updated Critical area Report, including peer review, as required by the King County Superior Court's remand of the previous final plat approval. In addition to the final plat conditions from the January 2017 Hearing Examiner Final Plat decision, it was determined at the August 15, 2018, meeting that additional conditions are necessary to ensure that the Applicant provides a bond or completes the Talus Parcel 8 Lot 5 Slope Stability Enhancement; that landscaping below the 916 Reservoir in Parcel 7 would receive annual inspection and maintenance through the Home Owners Association; and that the 912 Reservoir Settlement Agreement is carried out. *Findings 1 – 13.*
2. **With conditions, the final plat will comply with the applicable conditions of preliminary plat approval.** As set out in the Hearing Examiner's 2017 Final Plat approval, the residential development proposed for the property is consistent with the Comprehensive Plan's Urban Village designation. The proposed development is consistent with the purpose and requirements of the Urban Village/East Village zone. The application for final plat approval was adequately reviewed for compliance with the conditions of the preliminary plat approval. Appropriate provision has been made for the public health, safety, general welfare, and all other items specified in IMC 18.13.310 and the Development Agreement. The City required additional site exploration and analysis of the soil conditions and overall slope stability on Talus Parcel 7 and Talus Parcel 8 and an updated Critical area Report, including peer review, as required by the King County

Superior Court's remand of the previous Final Plat approval. Additional conditions are necessary to ensure that the Applicant provides a bond or completes the Talus Parcel 8 Lot 5 Slope Stability Enhancement; that landscaping below the 916 Reservoir in Parcel 7 would receive annual inspection and maintenance through the Home Owners Association; and that the 912 Reservoir Settlement Agreement is carried out. *Findings 1 – 13.*

DECISION

Based on the preceding findings and conclusions, the final plat for TALUS Parcels 7 & 8 is **APPROVED**, with the following conditions:³

1. Prior to recording the Final Plat for Talus Parcels 7 and 8, the applicant shall bond or complete the Talus Parcel 8 Lot 5 Slope Stability Enhancement per the approved permit associated with the work.
2. It was determined that the engineered geocell/geotextile landscaping treatment of the rock cut slope below the 916 Reservoir in Parcel 7 will require periodic long-term maintenance of the landscaping and drainage at the toe of the rock cut slope. The Home Owners Association documents for the plat shall address the requirement to provide annual inspection and maintenance as necessary.
3. Approval of the Final Plat is reliant upon the execution of the 912 Reservoir Settlement Agreement, dated 15 August 2018 (Exhibit 11).

Decided this 29th day of August 2018.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

³ All conditions attached to the Hearing Examiner's January 4, 2017, Final Plat decision remain in effect.